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In the
Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1652

LYLE S. WOODCOCK,
PETITIONER,

v.

R. W. AMARAL,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF THE RESPONDENT AMARAL IN OPPOSITION

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Opinions Below

This case arises from what was, perhaps, the most voluminously litigated criminal matter in the history of the Commonwealth of Massachusetts.

The opinion of the Court of Appeals for the First Circuit is reported at 511 F.2d 985. The opinion of the United States District Court for the District of Massachusetts is reported at 373 F. Supp. 664. The opinion of the Supreme Judicial Court is reported at 1971 Mass. Advance Sheets 1367, *sub nom., Commonwealth* v. *Beneficial Finance Company, cert. denied, sub nom. Woodcock* v. *Massachusetts,* 407 U.S. 910 (1972); see *Id.* for a listing of the denial of other petitions for certiorari filed by the instant petitioner's co-defendants.

Jurisdiction

The petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254 (1).

Questions Presented

1. Whether this Court ought to grant certiorari to review a case which has been unanimously affirmed by every reviewing court; and in which no novel questions of law are presented?
2. Whether this Court ought to grant certiorari to review a case which presents no issues in conflict in either the Circuit Courts or the state courts.

Statement of the Case

The facts of the case as they apply to this petitioner are set forth in the unanimous opinion of the Supreme Judicial Court. *Commonwealth* v. *Beneficial Finance Company,* 1971 Mass. Advance Sheets 1367, at 1398-1412. The facts are also summarized in the unanimous opinion of the Court of Appeals for the First Circuit. 511 F.2d at 987-988. They are reprinted in the Appendix to the petition at 26-28.

The questions raised here arise out of the first of two jury trials which are commonly known as the "Small Loans Cases". They are believed to be the longest and most time consuming in Massachusetts history. The various pre-trial motions of the defendants were heard for 65 court days and span 4370 transcript pages. The decisions by the trial court on the motions cover about 700 pages. Forty-nine indictments returned by a special grand jury in 1964 were grouped for the first small loans trial. The indictments were presented as the result of an investigation developed by the Massachusetts Crime Commission, a body created by the General Court of the Commonwealth "to investigate and study as a basis for legislative action the existence and extent of organized crime within the Commonwealth and corrupt practices in government at state and local levels." Massachusetts Resolves of 1962, Ch. 146 (1962). The evidence accumulated by the Crime Commission was given to the Attorney General of the Commonwealth who presented the case to the Grand Jury.

The first small loans trial began July 18, 1966, and, lasted about five months. The defendants took 1916 exceptions to rulings by the trial court. The transcripts of evidence in the trial consist of 103 volumes containing more than 7,500 pages and the official state court record of pleadings, motions and decisions fills 18 bound volumes. In presenting the case of the instant petitioner to the Court of Appeals the parties manage to the record to two bound volumes.

Following the second small loans trial, in which petitioner was granted a direct verdict of not guilty, the Supreme Judicial Court consolidated argument and devoted two complete hearing days to an oral presentation of the appeals. The opinion of the Court meticulously covered, discussed and disposed of each point raised by petitioner. From this exhaustive working out of the judi-

cial process the petitioner presents five points which have been rejected, not only by the judge and jury at the trial in chief, but also by every court sitting in review of the jury's verdict, without a single dissent in either the state or federal courts.

Reasons for Denying the Writ

I. There Are No Novel or Substantial Questions of Law Presented by This Petition to Justify Review by the Supreme Court.

This petition presents questions which, it is suggested, are clearly insufficient to grant certiorari. For purposes of analysis respondent will list the questions and address them in summary form.

A. *The Question of the Indictments.*

Petitioner asserts the return of indictments on insufficient evidence is error of constitutional dimension. The problems with this question were clearly recognized by the Court of Appeals when it found petitioner's contention at variance with explicit and consistent holdings of this court that indictments were not open to challenge on the basis that inadequate or incompetent evidence was presented to the grand jury. *Costello* v. *United States,* 350 U.S. 359 (1956); *Lawn* v. *United States,* 355 U.S. 339 (1958). This rule was reaffirmed as late as January, 1974, in *United States* v. *Calandra,* 414 U.S. 338 (1974). The rule is not in dispute and petitioner presents no substantial question for certiorari. Moreover, as noted by the Court of Appeals neither the District Court nor the Supreme Judicial Court ever considered whether the evidence was in fact insufficient, 511 F.2d at 993, rendering the merits of petitioner's claim to this Court inappropriate.

B. *The Brady Questions.*

Petitioner asserted in the state courts, and in the courts below on habeas corpus, various claims based on the rule of *Brady* v. *Maryland,* 373 U.S. 83 (1963). The Court of Appeals in an exhaustive discussion of these contentions dismissed them all. 511 F.2d 988-992. The Court said, at 511 F.2d 992:

> ". . . we find nothing in Woodcock's *Brady* contentions that require reversal. Nor do his contention, *which are all without individual merit,* gain any strength when viewed collectively." (emphasis supplied).

These claims may be divided into two categories. First, an alleged misrepresentation by the prosecutor at trial and, secondly, questions relating to the disclosure of exculpatory evidence. As to the issue of the trial prosecutor's representation the Court of Appeals agreed with the trial judge that the prosecutor's representation, which in fact was only a cautioning of defense counsel regarding cross-examination of a witness at trial, was a perfectly correct, proper, and truthful statement under all of the circumstances. See 511 F.2d at 989-990, and n. 7. Judge Moore said below that defense counsel had full opportunity to explore this warning and concluded ". . . we see no basis for reversal on this ground." 511 F.2d at 999.

The second aspect of petitioner's *Brady* contentions concern certain expense vouchers of one Heath, who was a Commonwealth witness during the trial. Petitioner's argument is that the vouchers could have allowed him to impeach Heath's credibility on the question of whether Heath had lunch with certain people on certain days. Petitioner's contention is similar to what any experienced

trial counsel could be expected to argue, but the Court of Appeals said the argument here was "speculative at best"; and further that it could not be said that ". . . had the evidence been disclosed its use would have created a reasonable possibility of a different result." 511 F.2d 991. The evidence in question here had nothing to do with this petitioner. The substantive evidence in question on the vouchers was never even admitted against him. As noted by the Court below ". . . [w]e cannot know what was on the minds of the jurors, nor can we say how cross-examination of Heath based on the vouchers would have affected them, *but the impact of the vouchers upon us is not great . . .*" 511 F.2d at 992 (emphasis supplied).

The petitioner has not asserted substantial questions under *Brady* or *Giglio* v. *United States,* 405 U.S. 150 (1972). He is, rather, calling into issue innocent miscalculations made during an extremely complex and protracted trial. It was a trial, we should note, which probably involves the most full and complete disclosure ever made in a criminal case in the history of the Massachusetts Superior Court. *Commonwealth* v. *Beneficial Finance Company,* 1971 Mass. Adv. Sheets at 1481. The petitioner has not cited any conflicts in any Circuits which should impel this Court to grant certiorari on this ground.

C. *The Equal Protection Claim.*

Petitioner additionally contends that he was indicted by the Massachusetts legislature because the Massachusetts legislature had created a Crime Commission which, after an investigation, turned evidence over to the Attorney General for prosecution. In making this contention petitioner has misrepresented what occurred before the Grand Jury. One man, not many, was named a Special Assistant Attorney General to aid in the presentation of evidence.

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There were no mysterious "legislative agents" sworn in "minutes" before the Grand Jury was convened. See 1971 Mass. Adv. Sheets 1371-74 for a detailed discussion. The trial court, further, found as a fact that the Attorney General fully controlled the presentation of evidence, and was in no way an agent of the legislature. 1971 Mass. Adv. Sheets at 1373. The other arguments advanced by petitioner to support his claim of a "unique" indictment are not encompassed by the record in the Courts below. The Supreme Judicial Court and the Court of Appeals both found the complexity of these proceedings fully justified the actions of the Commonwealth. 511 F.2d 996. This Court ought not to allow petitioner to raise, once again, what is little more than a substantive due process argument, on certiorari.

D. *Severance*

There are two aspects to petitioner's severance claims. He first argues the rationale of *Bruton* v. *United States,* 391 U.S. 123 (1968) requires severance. The Court of Appeals dealt perfectly correctly with this argument. Petitioner does not argue, however, that there was a specifically incriminating statement admitted against him as in *Bruton;* here he complains that the evidence against him was insufficient and he was found guilty by virtue of his association with his co-defendants. Petitioner's argument ignores several relevant factors taken into account by the First Circuit. Petitioner was tried jointly with his co-conspirators. He was on trial for the crime of conspiracy, as well as bribery, and *Bruton* expressly did not deal with a situation where statements were admissible under well recognized exceptions to the hearsay rule, 391 U.S. at 128, n. 3, such as in petitioner's case.

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The second aspect of the severance claim is that, as a substantive matter, petitioner was denied due process because the jury could not have followed instructions in this complex case. While this argument not only ignores the fact that the jury returned some not guilty verdicts, it also assumes the worst, in speculative terms, because the petitioner offers absolutely no evidence of specific prejudice. As stated by the Court of Appeals:

> ". . . we see nothing in the evidence, the numbers of defendants, or the rulings of the trial judge which would warrant a conclusion that the sheer complexity of this trial prevented the jury from appraising the independent evidence against this appellant and meeting out individual justice under law." 511 F.2d at 995.

This issue is yet another substantive due process claim inappropriate for certiorari.

E. *The Ex Post Facto Law Question.*

Petitioner's final contention is that he was convicted of the substantive crime of bribery only as the result of the passage of an *ex post facto* law. The fundamental difficulty with this argument is that in affirming the petitioner's conviction the Supreme Judicial Court nowhere cited, relied on, or referenced the statute in question. Petitioner is not daunted by this, however, because he suggests that the reliance was *conceptual* rather than express. The trial court found as a fact that petitioner specifically delegated an agent to pay the bribe. Almost thirty years prior to this petitioner's case the Supreme Judicial Court dealt with the same contention in *Commonwealth* v. *Connolly*, 308 Mass. 481, 489-490 (1941) and in that case it explicitly

enunciated a rule that one who effects a bribe can be convicted as a principal. See also *Commonwealth* v. *Mannos,* 311 Mass. 94 (1942). There was no error in the Court of Appeals resolution of this issue, see 511 F.2d at 996-997, and the issue is not suitable for certiorari.

II. The Petitioner Has Shown No Conflicts Within Any Jurisdiction Which Would Justify a Grant of Certiorari.

Rule 19 of this court embodies a concept that certiorari should not be granted to review ordinary questions of law which involve little or no dispute. There are no issues present in this case which have not been heretofore determined by this court. There is not one question decided by any of the Courts below which could be construed in any way as inconsistent with decisions of this Court. There are no ripened conflicts in either the state or federal courts which could be advanced by the granting of certiorari. While the respondent recognizes that certiorari is granted a matter of sound judicial discretion, he submits the instant case would be particularly inappropriate for review.

This petitioner has been constantly litigating these issues since his indictment in 1964. This is his second attempt to have this Court determine his claims. The case from which petition arises is, as has been noted, probably the longest and most complex in Massachusetts history. In the more than ten years petitioner has been within the criminal justice system he has not evoked one dissent from either the Supreme Judicial Court, the District Court, or the Court of Appeals. Considerations of finality, if nothing else, dictate that certiorari be denied. Cf. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners,* 76 Harv. L. Rev. 441 (1963). Moreover,

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the questions raised in this petition do not truly comprehend guilt or innocence. Petitioner is, rather, asking the Court to substitute its judgment for that of the lower federal courts, the trial judge, and, indeed, the jury itself. These claims do not justify certiorari.

Respectfully submitted,

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